IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 5048 of 2005(A)

I.A.576/04 IN OS.17/2000 of MUNSIFF-MAGISTRATE'SCOURT,PONNANI

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PETITIONER:

RAGHAVAN, AGED 58 YEARS,
S/O. KUTTYERI THUPPA, MARANCHERI AMSOM
PARICHAKAM DESOM, PONNANI TALUK.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENT:

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1. JANAKI, AGED 60 YEARS,
W/O. KUTTYERI VELAPPU, VELIAMKODE AMSOM
GRAMAM DESOM, P.O. GRAMAM, PIN-679 579,
MALAPPURAM DISTRICT.

2. SREEDHARAN, AGED 53 YEARS,
S/O. KUTTYERI THUPPA, MARANCHERI AMSOM,
PARICHAKAM DESOM, PONNANI TALUK. (DELETED)

(THE NAME OF THE 2ND RESPONDENT IS DELETED FROM THE ARRAY OF PARTIES AT THE REQUEST OF THE PETITIONER AS PER ORDER DT. 16.1.06 IN WPC.)

BY ADV. SMT.C.V.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.5048/2005

APPENDIX

PETITIONER'S EXTS:

Ext.P1 – TRUE COPY OF PRELIMINARY DECREE IN O.S.17/2000 OF MUNSIFF-MAGISTRATE'S COURT, PONNANI.

Ext.P2 – TRUE COPY OF COMMN. REPORT OF SRI.JISON P.JOSE, ADVOCATE, IN I.A.581/03 IN O.S.17/2000

Ext.P3 – TRUE COPY OF I.A.576/04 FILED BY PETR. AND R2.

Ext.P4 – TRUE COPY OF ORDER DT.8.2.05 IN I.A.576/04 IN O.S.17/00 OF MUNSIFF-MAGISTRATE, PONNANI

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.5048 OF 2005

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DATED THIS THE 29TH MAY, 2007

J U D G M E N T

Ext.P4 order by which the trial court dismissed an application for setting aside a commission report and plan in proceedings for passage of final decree is under challenge by the 1st defendant who was entitled only for a very small moiety of the properties ordered to be partitioned. The contentions which were raised before the learned Munsiff-Magistrate were twofold. Firstly it was contended that the value of the land determined by the advocate commissioner is low. This contention, in my opinion, was rightly overruled by the learned Munsiff-Magistrate. The second contention was that the value of a small building which is situated on the property recommended by the commissioner to be allotted to the share of the respondent is quite inadequate. Ext.P2 commission report describes the building in question as a building having two rooms, a portico and a kitchen constructed with laterite stones and thatched with asbestos sheet. The commissioner has recommended a value of Rs.17,500/- only towards value of the building.

2. When I suggested to the counsel appearing for the parties that the court below can be directed to have a private auction between

the parties as regards the building, the learned counsel for the respondent submitted that Rs.35,000/- (double the amount recommended by the commissioner) can be fixed as the value of the building. The learned counsel for the petitioner was not in a position to submit as to what in the opinion of the petitioner is the correct value of the building.

3. Under these circumstances, I dispose of the Writ Petition modifying the impugned order to the extent of directing the court below to refix the value of the house situated on the property. The value so refixed shall not be less than Rs.35,000/-. In all other respects the impugned order will stand. The learned Munsiff-Magistrate will refix the value as ordered above at his earliest and at any rate within one month of receiving copy of this judgment. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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